



DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

Office Of The Assistant Secretary

24 JAN 2001

MEMORANDUM FOR ALMAJCOM-FOA-DRU (CONTRACTING)

FROM: SAF/AQC
1060 Air Force Pentagon
Washington DC 20330-1060

SUBJECT: Commercial Item and Price Reasonableness Determinations

Recent audits and reviews identified concerns over the adequacy of commercial item determinations and price reasonableness determinations. This policy memo highlights the distinctions between the two and emphasizes that each determination fulfills a critical, but different, requirement within the acquisition process.

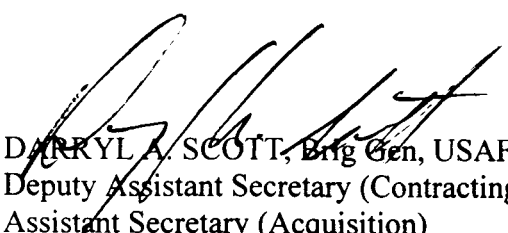
Federal Acquisition Regulation (FAR) mandates that all acquisitions use market research to determine whether commercial items or nondevelopmental items are available to meet an agency's requirements. FAR 10.002 further states that agencies should document the results of this market research in a manner appropriate to the size and complexity of the acquisition. This documentation should identify all market research information justifying an official's determination that a given item or service meets the statutory definitions of commercial (see FAR 2.101). If the item or service meets the commercial definition, then statute and regulation require the use of a FAR Part 12 contract (FAR 12.102(a)). While no format is specified, the memorandum for record or "determinations and findings" (see FAR 1.701) are recommended.

A commercial item determination does not fulfill the additional requirement to document price reasonableness (FAR 12.209). Though these two determinations may both consider the same information obtained during market research, they are separate and distinct from each other. A price reasonableness determination is required for all contract awards whether awarded under FAR Part 12, 13, 14 or 15 procedures. For commercial items or services, price reasonableness can be established in accordance with FAR 13.106-3, 14.408-2, or Subpart 15.4, as applicable.

Establishing price reasonableness for sole source commercial items may seem particularly challenging given the FAR Part 12 exemptions to Cost Accounting Standards and Truth in Negotiations Act submissions of cost and pricing data. The attached policy memo from the Director of Defense Procurement addresses these situations, clarifying the use of the clause at FAR 52.215-20, Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data (Oct 1997). The memo also emphasizes that the clause should only be used when information already available to the contracting officer is not adequate to determine price reasonableness.

Finally, there may be rare instances when the contracting officer exhausts all options to obtain needed information and still cannot determine the price fair and reasonable. Under such circumstances contracting officers are encouraged to escalate negotiations to higher management levels. If aggressive negotiation still results in an inability to determine price reasonableness, award can only be made if the Head of Contracting Activity determines it to be in the best interest of the Government (FAR Part 15.403-3(a)(4)).

Points of contact are Lt Col Shelly Kalkowski, SAF/AQCP, DSN 425-7072, michelle.kalkowski@pentagon.af.mil, and Lt Col Al Boykin, SAF/AQCP, DSN 425-7056, alan.boykin@pentagon.af.mil.



DARRYL A. SCOTT, Brig Gen, USAF
Deputy Assistant Secretary (Contracting)
Assistant Secretary (Acquisition)

Attachment:
DDP Memo, dated August 2, 2000



ACQUISITION AND
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

August 2, 2000

DP/CPF

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT), ASA(AL&T)
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN(RD&A)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
EXECUTIVE DIRECTOR FOR PROCUREMENT MANAGEMENT
(DLSC/DLA)

SUBJECT: Obtaining Information for Pricing Sole-Source
Commercial Items

Last year, pursuant to Section 803 of the Fiscal Year (FY) 1999 Strom Thurmond Defense Authorization Act, Parts 12 and 15 of the Federal Acquisition Regulation (FAR) were revised to better address the pricing of commercial items. These revisions clarified the guidance at FAR 15.403-3 regarding the need for contracting officers to obtain information from offerors to support a determination of price reasonableness when information from other sources is insufficient to make the determination. In setting forth the various price analysis techniques used to establish price reasonableness, FAR 15.404-1(b) states a preference for comparison with prices previously proposed and paid for the same or similar items. To perform these price comparisons, particularly when pricing sole-source commercial items, the contracting officer must have access to pertinent historical pricing information.

Pursuant to obtaining this information, in its report of June 24, 1999, entitled "CONTRACT MANAGEMENT: DoD Pricing of Commercial Items Needs Continued Emphasis," the General Accounting Office (GAO) recommended that the DoD clarify the circumstances when it is appropriate to use the clause at FAR 52.215-20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (Oct 1997), to obtain historical pricing information. The GAO stressed the importance of understanding and using this information when pricing commercial item purchases from a sole source.



Please remind your contracting professionals that the clause at FAR 52.215-20 should be included in solicitations for sole-source commercial items when the contracting officer has a reasonable expectation that the offeror will request a commercial item exception to a requirement for submission of certified cost or pricing data, and that the offeror will need to provide, at a minimum, appropriate information on the prices at which the same or similar items have been previously sold.

Additional information may be requested to the extent needed to permit an adequate evaluation of the proposed price in accordance with FAR 15.403-3. However, as a matter of policy, FAR 15.402(a)(2)(i) states that offerors should not be requested to provide additional information if the contracting officer already has information, available from within the Government or from sources other than the offeror, that is adequate for evaluating price reasonableness. The clause at FAR 52.215-20 should be used only when information already available to the contracting officer is not adequate. Alternate IV to the clause should be used when identifying specific information needed from the offeror.

Questions regarding this matter may be addressed to Mr. Richard Brown, OUSD(A&T)DP/CPF, brownrg@acq.osd.mil, or by phone at 703-695-7197.



Deidre A. Lee
Director, Defense Procurement